

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE: Lois A. Yankah
Debtor.

CASE NO.: 12-35627-KLP
Chapter 7

CLIFFORD J. MACK,
Movant,

v.

Adv. Proc. No. 13-03180

LOIS A. YANKAH,
Defendant.

**PLAINTIFF'S MOTION TO COMPEL DISCOVERY RESPONSES FROM
DEFENDANT PURSUANT TO RULES 26 AND 37 OF THE FEDERAL RULES OF
CIVIL PROCEDURE AND MEMORANDUM IN SUPPORT THEREOF,
MOTION FOR SANCTIONS PURSUANT TO RULE 37 OF THE FEDERAL RULES OF
CIVIL PROCEDURE FOR FAILURE TO RESPOND TO DISCOVERY REQUESTS
AND MEMORANDUM IN SUPPORT THEREOF,
AND NOTICE OF HEARING**

Clifford J. Mack (hereinafter "Mack" and/or "Plaintiff"), by counsel, pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure, states as follows:

ROBERT A. CANFIELD, VSB#16901
CANFIELD, BAER & HELLER, LLP
2201 LIBBIE AVENUE, SUITE 200
RICHMOND, VA 23230
804-673-6600
804-673-6604
BCANFIELD@CANFIELDBAER.COM
COUNSEL FOR CLIFFORD J. MACK

MOTION TO COMPEL

1. On September 16, 2013, Mack filed this adversary proceeding against Debtor Lois A Yankah (hereinafter “Yankah” and/or “Defendant”) and was assigned case number 13-03180.

2. Defendant was properly served with the Complaint and Summons and filed her Answer to Complaint on October 18, 2013.

3. The Pre-Trial Conference was held on November 6, 2013, following which the Pre-Trial Order (hereinafter referred to as “the Pre-Trial Order”) was entered on November 15, 2013. (Docket Item #12).

4. Pursuant to the Pre-Trial Order, Mack filed his Pretrial Disclosures Pursuant to FRCP 26 on November 29, 2013, which was the due date.

5. Yankah failed to file any Pretrial Disclosures.

6. On January 22, 2014, Mack filed and mailed to Yankah Interrogatories, a Request for Production of Documents, and a Request for Admissions, to which Yankah had a deadline of February 21, 2014 to respond.

7. Yankah did not respond to any of the discovery requests.

8. Mack sent Yankah a reminder letter on February 24, 2014, stating that the deadlines for her responses had passed and asking that the responses be sent immediately.

9. There was no reply to Mack’s letter and no response was ever received to the discovery requests.

10. As such, all statements in Mack’s Request for Admissions are now deemed admitted.

11. Yankah has ignored the Pre-Trial Order, in direct violation of Rule 26 of the Federal Rules of Civil Procedure and Rule 7026 of the Federal Rules of Bankruptcy Procedure.

WHEREFORE, Clifford J. Mack respectfully asks that this Court compel Defendant Lois A. Yankah to comply with Rule 26 of the Federal Rules of Civil Procedure and Rule 7026 of the Federal Rules of Bankruptcy Procedure and to respond to Mack's discovery requests.

MOTION FOR SANCTIONS

12. Plaintiff Clifford J. Mack incorporates all allegations contained above as if fully set forth herein.

13. Rule 37(b)(2)(A) of the Federal Rules of Civil Procedure, made applicable in adversary proceedings by Rule 7037 of the Federal Rules of Bankruptcy Procedure, states that if a party "fails to obey an order to provide or permit discovery..., the court where the action is pending may issue further just orders." These orders may include prohibiting the defendant from supporting or defending claims or defenses or from introducing evidence, rendering a default judgment against the disobedient party, and considering the disobedient party to be in contempt of court.

14. Further, the court may additionally order that the disobedient party to pay the reasonable expenses, including attorney's fees, caused by the failure. FRCP 37(b)(2)(C).

15. Attached as Exhibit A is Plaintiff's Certification pursuant to FRCP 37(d)(1)(B) that he in good faith attempted to confer with the party failing to act in an effort to obtain response without court action, also evidence by Exhibit B, which is a letter to Defendant asking that the responses be remitted so that no further legal action need be taken.

16. Defendant has violated FRCP 37 by disregarding the Pretrial Order.

WHEREFORE, Clifford J. Mack hereby requests that sanctions be ordered against Defendant Lois A. Yankah including, but not limited to: prohibiting the defendant from supporting or defending claims or defenses or from introducing evidence, rendering a default judgment against the disobedient party, considering the disobedient party to be in contempt of court, ordering defendant to pay the reasonable expenses, including attorney's fees, caused by her failure, and for any other relief that this Court deems necessary.

CLIFFORD J. MACK

By: /s/ Robert A. Canfield
Counsel

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Canfield, Baer & Heller, LLP
2201 Libbie Avenue, Suite 200
Richmond, VA 23230
☎ 804-673-6600
✉ 804-673-6604
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Counsel for Clifford J. Mack

Exhibit A

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**IN RE: Lois A. Yankah
Debtor.**

**CASE NO.: 12-35627-KLP
Chapter 7**

CLIFFORD J. MACK,
Movant,

v.

Adv. Proc. No. 13-03180

LOIS A. YANKAH,
Defendant.

PLAINTIFF'S CERTIFICATION PURSUANT TO FRCP 37(d)(1)(B)

COMES NOW Robert A. Canfield, on behalf of Plaintiff Clifford J. Mack, and states that he is acquainted with the facts set forth in the forgoing Motions to Compel and Sanction; that said Motions are being made only after Movant has, in good faith, attempted to secure Defendant's responses to Interrogatories, a Request for Production of Documents, and a Request for Admissions without court action; and that, to date, he has not received a response to these discovery requests nor Defendant's Rule 26 Pretrial Disclosures.

/s/ Robert A. Canfield
Robert A. Canfield, VSB#16901
Canfield, Baer & Heller, LLP
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February 24, 2014

Ms. Lois A. Yankah
P.O. Box 85
Richmond, Virginia 23218

**Re: Discovery Request Deadline
Issuance of Subpoenas**

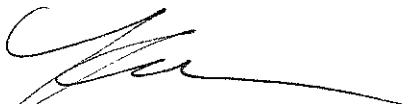
Dear Ms. Yankah,

We filed with the Court and mailed to you various discovery requests on January 22, 2014. To date, we have not received a response from you. Please be aware that the deadline for returning your responses has lapsed. Pursuant to Federal Rules of Bankruptcy Procedure 7033, 7034 and 7036, you were given 30 days to respond, which was February 21, 2014. Please remit these responses immediately so as to avoid further court action against you.

Further, you are in violation of the Pretrial Order issued pursuant to Federal Rule of Bankruptcy Procedure 7026. I strongly suggest you review the deadlines set out in the order that was mailed to you by the court.

Enclosed, please find two additional subpoenas that we are issuing in this case, pursuant to Fed. R. Civ. P. 45(a)(4).

Very truly yours,



Kathleen C. Kruck
Paralegal to
Robert A. Canfield, Esquire

/kck
Enclosures

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE: Lois A. Yankah
Debtor.

CASE NO.: 12-35627-DOT
Chapter 7

P. O. Box 85
Richmond, VA 23218

SSN / ITIN: xxx-xx-1935

NOTICE OF HEARING ON MOTION TO COMPEL AND MOTION FOR SANCTIONS

Clifford J. Mack has filed papers with this Court.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the relief requested in the objection, or if you want the Court to consider your views on the objection, then on or before 21 days after the filing of this motion, you or your attorney must:

- File with the Court, at the address shown below, a written request for a hearing [or a written response pursuant to Local Bankruptcy Rule 9013-1(h)]. If you mail your request for hearing (or response) to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

Clerk of the Court
United States Bankruptcy Court
Eastern District of Virginia, Richmond Division
701 E. Broad Street
Richmond, VA 23219

You must also mail a copy to:

Robert A. Canfield, Esquire
2201 Libbie Ave., Suite 200
Richmond, VA 23230

- Attend the hearing scheduled on April 23, 2014 at 12:30 p.m., in the United States Bankruptcy Court, 701 East Broad Street, Room 5100, Richmond, Virginia.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting the request of Clifford J. Mack.

Date: March 26, 2014

/s/ Robert A. Canfield

Robert A. Canfield

Robert A. Canfield, VSB #16901
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■ 804-673-6600
■ 804-673-6604
Counsel for Clifford J. Mack

CERTIFICATE OF SERVICE

I hereby certify that on this 26th of March, 2014, a copy of the foregoing was either electronically transmitted and/or mailed by regular mail, postage prepaid to all necessary parties, as listed below:

Lois A. Yankah
P. O. Box 85
Richmond, VA 23218

/s/ Robert A. Canfield

Robert A. Canfield